

ORIGINAL

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of )  
Equal Access and Interconnection ) CC Docket No. 94-54  
Obligations Pertaining to ) RM-8012  
Commercial Mobile Radio Services )

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### Summary

AMSC, the licensee of the U.S. Mobile Satellite Service ("MSS") system, opposes the imposition of any equal access requirement on MSS providers.

It appears that the Commission is not proposing an equal access requirement for MSS providers, since the NPRM proposes to define equal access obligations for CMRS providers on the basis of the provider's service area and MSS has a nationwide service area. AMSC supports such a definition of equal access obligations, at least as it applies to MSS. Such a definition is consistent with both (i) the Commission's long-standing view of MSS as an end-to-end nationwide service and (ii) the fact that AMSC cannot differentiate between "local" and "long distance" traffic.

Due to the inability to distinguish between "local" and "long distance" MSS traffic, the only way for an MSS provider to implement an equal access obligation would be to hand-off a portion of virtually all of its traffic to interexchange carriers. To define the MSS equal access obligation in this manner, however, would radically alter AMSC's ability to provide end-to-end nationwide service, a result that would cause serious confusion to consumers and harm to AMSC's efforts to market its new service, and would lead to higher prices for virtually all MSS consumers. In the case of a new service such as MSS, which requires such an enormous investment and high risk, this unnecessary and burdensome interference with the development of the service would be particularly damaging.

## Table Of Contents

	Page
Summary . . . . .	i
Background . . . . .	1
Discussion . . . . .	7
MSS Has A Nationwide Service Area . . . . .	7
MSS Consumers Would Not Benefit From Equal Access . . . . .	9
Other Public Policy Goals Will Not Be Met . . . . .	12
Conclusion . . . . .	13

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Equal Access and Interconnection	)	CC Docket No. 94-54
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COMMENTS OF AMSC SUBSIDIARY CORPORATION

AMSC Subsidiary Corporation ("AMSC") hereby comments on the "Notice of Proposed Rulemaking and Notice of Inquiry" (the "NPRM") in the above-referenced proceeding dealing with imposing an equal access obligation on cellular carriers and other Commercial Mobile Radio Service ("CMRS") providers.<sup>1/</sup> AMSC strongly opposes the imposition of any equal access requirement on Mobile Satellite Service ("MSS") providers. As discussed below, and as the Commission appears to recognize in its NPRM, MSS is a unique service to which equal access should not apply.

Background

The Commission authorized AMSC in 1989 to construct, launch and operate the first dedicated U.S. MSS system, as the culmination of a licensing process that began with the filing of

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<sup>1/</sup> Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, RM-8012, FCC 94-145 (July 1, 1994); Order, DA 94-877 (August 11, 1994) (extending deadline for filing comments to September 12, 1994).

applications in 1985.<sup>2/</sup> Construction of the \$650 million system, including the \$40 million ground facility in Reston, Virginia, is now almost complete. The first satellite is scheduled for launch in March 1995, and is expected to be in service a few months later. The new system will provide high-quality, state-of-the-art mobile voice and data communications services to people who live, work or travel in rural and remote areas of the U.S. that previously were unserved.

The architecture of AMSC's system is basically the same for all customers. Calls originating from a mobile terminal will be transmitted to the satellite in the L band (1.5/1.6 GHz). The satellite will translate those frequencies into the Ku-band and

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2/ Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992); aff'd sub nom. Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993). AMSC is regulated as a common carrier. In the order establishing the regulatory structure for MSS, the Commission decided that the MSS licensee will be treated as a nondominant common carrier, subject to streamlined regulation. Second Report and Order, 2 FCC Rcd 485, 490 (1987). The Commission based this decision on its recognition of the existence of competition from terrestrial services in many of the markets that AMSC is expected to serve, as well as its recognition of the high financial risk to AMSC in constructing and operating the new system. Id. To further safeguard consumers, the Commission also requires AMSC to provide open and nondiscriminatory access to its space segment. Id. at 486.

In 1994, the Commission included MSS among the services to be classified as CMRS. Second Report and Order, 9 FCC Rcd 1411, 1457-58 (1994). At the same time, the Commission found that CMRS providers will face substantial competition, sufficient to forbear from applying most Title II regulations to their services. Id., at 1480-81. Resellers of AMSC services also are classified by the Commission as CMRS providers. As such these resellers would be affected by the outcome of this proceeding. Just as AMSC is seeking to exclude itself from any equal access obligation, references to "MSS providers" in these comments also includes resellers of AMSC services.

transmit the call to the AMSC feederlink earth station in Reston, Virginia. AMSC will then hand the call to its long-distance carrier, for termination anywhere in the world. Calls to mobile terminals will be routed to AMSC's earth station, uplinked to the satellite in the Ku band, and transmitted to mobile terminals in the L band.<sup>3/</sup>

A substantial portion of calls using the MSS system, perhaps even a majority of the calls, will be local calls from the customer's perspective, inasmuch as the calling and called parties will be in the same local access and transport area ("LATA"). For example, a truck driver in Montana may use AMSC's system to call ahead a few miles to alert its customer that it will be arriving with a delivery, or a veterinarian in Arizona may use AMSC's system to receive calls from local ranchers. As currently designed, however, the AMSC system is incapable of determining the precise location of a mobile terminal, except within the coverage area of one of the six satellite beams.

AMSC expects its system to serve between approximately 300,000 and 600,000 voice customers.<sup>4/</sup> The largest segment of AMSC's market is likely to be cellular customers that do not have service in rural and remote areas; these users will subscribe to

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3/ AMSC will also have available an earth station at the Washington International Teleport in Alexandria, Virginia, in order to provide redundancy and diversity on those occasions when rain fading is a problem for Ku band communications.

4/ The typical customer is expected to use the service for approximately 40-80 minutes per month.

what AMSC calls "Skycell" service.<sup>5/</sup> Skycell customers will use a dual-mode phone that will operate on cellular frequencies when the user is within range of a terrestrial system and in the L band when the user is outside of cellular range, thus allowing uninterrupted service. To reach projected levels of customer penetration, AMSC will undertake a major, targeted marketing campaign, the success of which is critical to the viability of AMSC's business. A key part of this campaign is the signing of agreements so far with more than 155 cellular carriers that will market Skycell service to their existing and potential customers. Cellular carriers will be responsible for the initial sale of equipment and service, equipment installation, and billing and customer service. In return, the carriers will be paid a commission on the Skycell revenues from their customers.<sup>6/</sup> This arrangement puts into place to market AMSC's services a large percentage of the estimated 15,000 sales representatives that

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5/ These comments focus on Skycell service to customers who also subscribe to cellular service, since this is expected to be the largest portion of AMSC subscribers and, in general in terms of equal access, Skycell service is illustrative of other services that AMSC will provide.

6/ At this time, due to MFJ constraints, cellular affiliates of the Bell Operating Companies may not market MSS, which for MFJ purposes is considered to be an interexchange service. AMSC has been actively involved in court and legislative proceeding to have this prohibition removed. See e.g., Comments and Petition for Relief of AMSC, Civil Action No. 82-0192 HHG (April 30, 1992). In a filing with the District Court on September 2, 1994, the Justice Department agrees with AMSC that the BOC cellular companies should be permitted to market AMSC's enhanced roaming service and that equal access requirements that apply to the BOCs elsewhere would not apply to AMSC or to the BOC marketing of AMSC's services. Reply Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers, Civil Action No. 82-0192 HHG (September 2, 1994) at 15-16.

currently market cellular service. AMSC will have similar arrangements with other providers of ground-based mobile service whose customers would benefit from satellite service. To train this large group of agents and keep it informed about AMSC's services will be a major undertaking involving a staff of fifty or more AMSC employees, but will be more cost-effective than AMSC maintaining its own nationwide sales force.

AMSC's rates for Skycell service will be approximately \$25 per month for access and \$1.49 per minute for calls received by or made from mobile terminals.<sup>7/</sup> The per-minute rate will include the long distance charge for the termination of calls from mobile terminals and for the backhaul of calls to a mobile terminal from a cellular facility to which the call was placed initially.<sup>8/</sup> This permits AMSC to simplify its pricing, offering a single price to customers regardless of where they are in the service area and where they are calling. This simplicity is crucial to AMSC's marketing effort, because AMSC's studies show that potential customers want to know with certainty what

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7/ In general, variation in rates is tied to such factors as volume commitments, power, and bandwidth. Thus, for instance, the \$1.49 per-minute rate assumes that the customer makes no minimum usage commitment and uses a mobile telephone with standard 6 kHz channels and a medium gain antenna.

8/ The only cases in which the standard per-minute charge will not include a long-distance component involve mobile-to-mobile traffic, which will never require the use of a long distance carrier. Mobile-to-mobile calls, which are expected to be quite rare, will double-hop through the satellite via the Reston earth station without ever entering the public telephone network. In addition, a small percentage of land-to-mobile traffic, which itself will be a small portion of overall system traffic, may not involve the use of the interexchange service provided by AMSC.

they will pay for service. AMSC's sales agents and its marketing materials can provide that certainty only if AMSC can incorporate all charges into the per-minute rate.

AMSC is in the process of contracting with interexchange service providers for what AMSC anticipates will be a relatively inexpensive, distance-insensitive domestic long distance rate, based on the high volume commitment that AMSC will be able to make for its system traffic. AMSC expects its long distance rate will be at least ten cents per minute less than the long distance rate that is available to most of its customers. AMSC has incorporated this low long distance rate into its per-minute rate for customers of Skycell service without marking up the long distance rate. AMSC's market studies show that the vast majority of potential customers are very price-sensitive and are wary of the price variability that often characterizes other situations in which they are "roaming." Again, this sensitivity makes it especially important to AMSC's marketing effort that AMSC is able to pass through to customers the savings from its high-volume purchases of interexchange service.

In the NPRM, the Commission proposes to require all cellular licensees to provide their customers with the same kind of equal access to a variety of competing interexchange carriers as is currently the case for customers of most landline telephone companies. The basis for the Commission's proposal is its belief that such a requirement may increase competition in the interexchange and mobile services marketplaces and foster parity between wireline and wireless services. The Commission does not

reach that conclusion for any other CMRS provider, but rather asks for comments on whether an equal access obligation should be imposed on other CMRS providers.

The Commission also seeks comment on when an equal access obligation arises -- i.e., the point at which a call must be handed to an interexchange carrier -- noting that traditional boundaries (such as LATAs) do not apply to wireless services. With respect to MSS specifically, the Commission states that "[g]iven the nature of this service, and its broad coverage area, there is some question as to how an equal access obligation would be imposed." NPRM at p. 24, n.104.

The Commission tentatively concludes that it should adopt a service area boundary definition in order to determine where calls must be handed off for purposes of the equal access obligation. This definition appears to eliminate any need for AMSC, with its nationwide service area, to provide equal access.

#### Discussion

AMSC strongly opposes the imposition of an equal access requirement on AMSC or other MSS providers. MSS is a unique nationwide service; imposing equal access requirements would only disrupt and impose additional costs on AMSC's marketing effort and on AMSC's customers, without any consumer benefit.

MSS Has A Nationwide Service Area. The Commission's proposal to adopt a service area boundary definition to determine where calls must be handed off for purposes of equal access, correctly appears to relieve MSS providers of any obligation to

provide equal access. As the Commission recognizes in its NPRM, MSS is a unique service. By definition, MSS is a nationwide service and, thus, all of AMSC's traffic will be within its service area and not subject to equal access.

Indeed, it was the Commission's vision of a satellite system providing ubiquitous, nationwide coverage that prompted the Commission to allocate spectrum to MSS and to authorize AMSC to construct and operate its system. To modify AMSC's authorization at this time to require AMSC to provide equal access for the interexchange portion of every call on the MSS system is to alter drastically the original concept of Mobile Satellite Service as an end-to-end nationwide service.

The imposition of an equal access requirement on landline local exchange carriers or even on CMRS providers such as cellular service providers, all of which are licensed to serve a defined local area and provide a relatively small amount of service outside that area, does not and would not have the same radical impact on their businesses as it would have on AMSC's business. MSS is different in that AMSC will provide an end-to-end service and the AMSC system does not know the exact location of the mobile customer and, thus, cannot in many cases distinguish between interLATA, intraLATA, intrastate or interstate calls. The only alternative would be to require AMSC to provide equal access on all calls, presumably by handing off all traffic that passes through landline interexchange facilities to and from AMSC's Reston, Virginia ground station. This result would seriously distort the Commission's long-standing definition

of MSS and, as discussed below, would only harm MSS consumers and AMSC's marketing effort.

MSS Consumers Would Not Benefit From Equal Access. Any attempt to force the "square peg" of equal access into the "round hole" of MSS by requiring equal access for the landline interexchange portion of each MSS call poses a tremendous danger of confusing potential MSS customers and doing serious damage to AMSC's efforts to market the new service. As discussed above, in order to assure customers of predictable prices, AMSC has designed a rate structure that incorporates the cost of landline interexchange service into its standard rate and applies the same per-minute rate to every call regardless of whether the call appears to the user to be "local" or "long distance." Thus, the AMSC customer in Montana calling to Montana will pay the same rate as the customer would pay to call to Washington, D.C. As such, the customer will know in advance what the rate will be and will not be left wondering why he or she received a bill from an interexchange carrier for what the customer would typically consider to be a "local" call. If the Commission imposes an equal access requirement on AMSC, this simplicity will disappear. Customers who select a separate IXC will receive two separate bills for virtually every call that they make using AMSC's system, regardless of whether it appeared to be local, and they will be left to sort through their bills to determine whether the bills are accurate and fair.

Moreover, with the low rate that AMSC has arranged for the landline interexchange portion of an MSS call and AMSC's decision

to pass that rate through to its subscribers without any mark-up, it is clear that equal access will not provide customers with a lower price for service. Quite to the contrary, it is likely that under an equal access regime the vast majority of AMSC's customers would not get the benefit of AMSC's volume discount, but instead would pay ten cents or more per minute extra.<sup>9/</sup>

The case against imposing an equal access requirement on MSS providers is particularly strong as it would apply to MSS in this early stage of development. Because there is no established customer base for MSS, it is extremely unlikely that interexchange carriers would compete to market their services. To date, the IXC's do not appear to have made much of an effort to market to the several million BOC cellular customers who take service in an equal access environment. It is extremely unlikely that those same IXC's will make any effort to market to a few hundred thousand MSS subscribers whose total volume of landline

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<sup>9/</sup> In order to provide volume discounts to its customers, AMSC could hold itself out to its customers as an interexchange carrier and attempt to market its landline interexchange service to those customers on the basis of this lower price. In addition to confusing customers, however, such an effort would pose substantial additional costs on AMSC. Moreover, AMSC is concerned that many customers are likely to subscribe out of habit to the IXC that they use for residential or business service, even though their rates, without the volume discount available to AMSC, in almost all cases will be substantially higher. If AMSC loses long distance traffic as a result, it will have to pay higher rates to its underlying carrier, which in turn will result in higher overall MSS rates.

interexchange traffic will be a tiny portion of the overall market.<sup>10/</sup>

Any equal access balloting process that the Commission might attempt to impose at this time would raise tremendous logistical problems and provide no benefit to consumers. Because AMSC's marketing effort relies on thousands of sales agents throughout the country, it will be virtually impossible to provide new MSS customers with up-to-date information on whatever services the IXCs might offer. Moreover, the long distance carriers that may be available to a cellular customer in a local market may not be the same carriers that will be available for interconnection to AMSC's ground facilities. Customers may have to select different long distance carriers for their MSS and cellular calls, which would lead to their receiving additional bills and additional customer confusion and resentment. There is also an issue of AMSC's ability to install the hardware and software to technically implement any equal access obligation. To be done properly without disrupting the introduction and provision of service, the installation would take at least two years from the time any obligation became effective.

The costs of implementing equal access will be substantial. In addition to the more intangible costs discussed above, AMSC

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<sup>10/</sup> As discussed above, AMSC is required by the Commission's rules to provide resellers with open and nondiscriminatory access to AMSC's space segment. As such, interexchange carriers that want to provide service to MSS customers directly would be free to tap into the MSS market by reselling AMSC service and offering their own end-to-end services to those customers.

estimates that the direct costs of modifying its facilities to provide equal access will be at least \$4 million.

In light of the already high cost and risk of constructing and operating the U.S. MSS system and the absence of any consumer benefit from imposing equal access obligations on MSS providers, it is clear that imposing these additional direct and indirect costs would be completely unjustified.

Other Public Policy Goals Will Not Be Met. The Commission suggests that the fundamental touchstone for its equal access analysis should be whether a CMRS provider has market power -- the ability to maintain prices above competitive levels for a significant period of time. The Commission has already determined that AMSC lacks market power.<sup>11/</sup> Moreover, imposing equal access will not foster any of the other policy goals the Commission has identified as serving the public interest with regard to the regulation of CMRS providers.<sup>12/</sup> As discussed above, rates for MSS will increase, not decrease, if equal access is imposed and there is no evidence that requiring equal access will foster competition. The same IXCs that have not undertaken to market to millions of BOC cellular customers are certainly not going to market to no more than 600,000 MSS customers. Finally, without equal access, MSS customers will have access to the same telecommunications networks and services as they would with equal access.

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11/ See supra note 3.


12/ NPRM at 3-4.

Conclusion

Therefore, for the reasons set forth above, AMSC Subsidiary Corporation respectfully urges the Commission to refrain from imposing an equal access requirement on MSS providers.


Respectfully submitted,

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